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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1955

No. ~~714~~ 35

THOMAS E. POLLARD, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 8, 1955

CERTIORARI GRANTED FEBRUARY 27, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 714

THOMAS E. POLLARD, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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[fol. 1]

DISTRICT COURT OF THE UNITED STATES
DISTRICT OF MINNESOTA
FOURTH DIVISION

Commissioner's Docket No. 1

Case No. 94

UNITED STATES OF AMERICA

v.

THOMAS E. POLLARD

WARRANT OF ARREST AND RETURN—July 17, 1951

To Any U. S. Marshal or Authorized Officer:

You are hereby commanded to arrest Thomas E. Pollard, and bring him forthwith before the nearest available United States Commissioner to answer to a complaint charging him with willingly, knowingly and feloniously taking, on or about May 21, 1951, at Minneapolis, Minnesota, after delivery into an authorized mail receptacle and before receipt by the addressee, a certain letter mailed on or about May 18, 1951, at Minneapolis, Minnesota, by Lea Testin, U. S. Reg. Dis. Off., addressed to John & Alice G. Flury, Rt. 4, Bemidji, Minn., forwarded by the P. O. Dept. to 1626 Linden Ave., Minneapolis, Minn., and removing the check contained therein, in violation of U.S.C. Title, 18, Section 1702, U. S. Code.

Date July 17, 1951.

——— ———, United States Commissioner.

RETURN

Received July 17, 1952, 19 — at St. Paul, Minn., and did not executed by arrest of Defendant sentenced in Fed. Court Minneapolis, Minnesota on Oct. 3, 1952 —— at —— on ——, 19 ——.

Date Nov. 20, 1952.

John J. McGowan, United States Marshal; District of Minnesota. By Charles E. Morrison, Deputy.

[fol. 2] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

[Title omitted]

COMPLAINT FOR VIOLATION OF U.S.C. TITLE 18 SECTION 1702—July 17, 1951

Before C. O. Lundquist, 715 Midland Bank Building, Minneapolis, Minnesota.

The undersigned complainant being duly sworn states:

That on or about May 21, 1951, at Minneapolis, Minnesota, in the County of Hennepin District of Minnesota, Thomas E. Pollard did willfully, knowingly and feloniously take, after delivery into an authorized mail receptacle and before receipt by the addressee, a certain letter mailed on or about May 18, 1951, at Minneapolis, Minnesota, by Lea Testin, U. S. Regional Disbursing Officer, addressed to John & Alice G. Flury, Rt. 4, Bemidji, Minnesota, and forwarded by the Post Office Department to 1626 Linden Avenue, Minneapolis, Minnesota, and that the defendant did willfully, knowingly and feloniously open said letter and remove the U. S. Treasury check, No. 18,186,703, dated May 18, 1951, in the amount of $192.29, contained therein.

C. E. Knudson, Post Office Inspector.

Sworn to before me, and subscribed in my presence, July 17th, 1951.

C. O. Lundquist, United States Commissioner.

Filed December 6th, 1952. Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy.

[fol. 3] DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

WAIVER OF INDICTMENT—September 8, 1952

Thomas E. Pollard the above named defendant, who is accused of unlawfully taking out of a letter addressed to John and Alice G. Flury, Route 4, Bemidji, Minnesota, before it had ~~been~~ delivered to the persons to whom it was directed, a United States Treasury Check, No. 18,186,70, dated May 18, 1951, in the amount of $192.29, and embezzling the same, being advised of the nature of the charge and of his rights, hereby waives in open court prosecution by indictment and consents that the proceeding may be by information instead of by indictment.

Thomas E. Pollard, Gladys A. M. Rippe, Counsel for Defendant.

Date September 8th, 1952.

[File endorsement omitted]

[fol. 4] UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

INFORMATION—Filed September 8, 1952

The United States Attorney Charges:

On or about the 21st day of May, 1951, in the City of Minneapolis, County of Hennepin, State and District of Minnesota, one Thomas E. Pollard did unlawfully take out of a letter addressed to John and Alice G. Flury, Route 4, Bemidji, Minnesota, before it had been delivered to the persons to whom it was directed, a United States Treasury

Check, No. 18,186,703, dated May 18, 1951, in the amount of $192.29, and did embezzle the same.

Philip Neville, United States Attorney.

[fol. 5] 9/8/52. (Joyce, J.) Hachey, PLEA "G," ref. & def. No counsel.

10/3/52. Joyce, J. (Hachey), 3 YEARS PROB., to Commence immediately after release from Stillwater. No counsel.

9/21/54. Joyce, Jr. (Evarts (Anderson), 2 YEARS, Jdgt. & Order of Prob., Etd. on 10/3/52 set aside). No counsel.

[fol. 6] UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

TRANSCRIPT OF PROCEEDINGS OF OCTOBER 3, 1952

The above entitled matter came on for sentencing before the Honorable Matthew M. Joyce, judge of the above court, in the United States Court House, Minneapolis, Minnesota, October 3, 1952; Ronald E. Hachey, Esq., Assistant United States District Attorney; the defendant appearing without counsel.

Mr. Hachey: Next matter is United States versus Thomas E. Pollard. This matter is here for sentencing, your honor. At this time the Government moves for sentencing of the defendant.

The Court: You are presently in Stillwater?

The Defendant: Yes, sir.

The Court: How long have you been there?

The Defendant: Thirteen months, sir.

The Court: Have you any craving or desire for a drink now?

[fol. 7] The Defendant: None whatsoever.

The Court: You are about 35?

The Defendant: Yes, sir.

The Court: I suppose that you are an age where you realize now the futility, don't you?

The Defendant: Yes, very much so, your Honor.

The Court: The report shows that you have taken a very active interest in the AA organization in the prison.

The Defendant: I have, sir.

The Court: And that you contemplate doing that when you get out?

The Defendant: I do.

The Court: The report also shows that you won't get out until 1953 sometime.

The Defendant: December, 1953 is my discharge date.

The Court: When do you have an opportunity for going before the parole?

The Defendant: Next month—I was given *given* three months in August, a three month waiting term, period, in August.

The Court: There was one thing you did, as shown in this probation report, which appealed to me. I realize that you had been on a protracted spree when you stole this government check, but when you sobered up long enough to understand what you had done, you went to one of the officers of the Alcoholics Anonymous and told him what [fol. 8] you had done and you sought to make amends insofar as you then could do. You told the FBI the circumstances, without any effort on your part to minimize the offense; in fact you had been drinking for some two weeks continually.

You are now 35 years of age.

The Defendant: Yes, sir.

The Court: You ought to know the misery and the grief and the sorrow and the horror of what continued drinking on your part will bring to you.

If I might suggest to you, and I am giving you gratuitous advice but it is the result of observation and experience—it is my view that when you get out you should immediately join the Alcoholics Anonymous organization—not wait a week or two weeks or three weeks—but have that your first mission after you contact your family, and do what they tell you to do and do it immediately and do it diligently and faithfully, carry out every obligation that they impose upon you. With your background and with your ability I think that you can win this fight.

If you don't do those things, and if you want to revert to drinking, you will be back here again because you will

commit some federal offense, and I won't be talking to you this way if you are ever before me again.

So, good luck to you and I hope the parole board will give you an opportunity.

[fol. 9] That is all.

The Defendant: Thank you very much, sir.

(Other criminal matters were then presented to the Court.)

The Court: Is there anything else, Mr. Hachey?

Mr. Hachey: Going back to the matter of Thomas E. Pollard who appeared this morning—I didn't quite understand that clearly—is there to be a probationary period after his release from Stillwater, or any type of sentencing?

The Court: It is to commence at the expiration of sentencing at Stillwater.

Mr. Hachey: Probation to commence after expiration of his sentencing at Stillwater—for how long?

The Court: Three years.

[fol. 10] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

JUDGMENT AND ORDER OF PROBATION—October 3, 1952

On this 3rd day of October, 1952, came the attorney for the government and the defendant appeared in person, and [1] without counsel; the Court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the Court, and the defendant thereupon stated that he waived the right to the assistance of counsel.

---

[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

It is adjudged that the defendant has been convicted upon his plea of [2] guilty of the offense of embezzlement of United States check in violation of 18 USC. 1702 as charged [3] in and Information (Ind. Waived) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court, It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that [4] imposition of sentence be, and the same is hereby suspended, and defendant is placed on probation to the United States Probation Officer for a period of three (3) years; said probation to commence immediately after his release from Stillwater Penitentiary, Stillwater, Minnesota.

[File endorsement omitted.]

It is further ordered that during the period of probation the defendant shall conduct himself as a law-abiding, industrious citizen and observe such conditions of probation

---

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number —" if required.

[4] If sentence is imposed but execution suspended, and probation ordered, enter here (1) sentence or sentences, specifying counts if any, (2) whether sentences are to run concurrently or consecutively, and if consecutively, when each term is to begin with reference to termination of preceding term or to any outstanding or unserved sentence, (3) whether defendant is to be further imprisoned until payment of fine or fine and costs, or until he is otherwise discharged as provided by law, (4) the facts regarding the suspension of the sentence or sentences and (5) the period of probation.

If sentence is suspended and probation ordered, enter here the foliowing: "The imposition of sentence is hereby suspended and the defendant is placed on probation for a period of — years from this date."

as the Court may prescribe. Otherwise the defendant may be brought before the court for a violation of the court's orders.

It is further ordered that the clerk deliver two certified copies of this judgment and order to the probation officer of this court, one of which shall be delivered to the defendant by the probation officer.

Approved:

Matthew M. Joyce, United States District Judge.
Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy Clerk. (Ronald E. Hachey, Ass't. U.S. Atty.)

[fol. 11] UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

Criminal Case No. 8283

[Title omitted]

ORDER FOR WARRANT—September 1, 1954

Upon the report of the U. S. Probation Officer that the above-named defendant has violated the terms of his probation and that there is probable cause that his probation should be revoked, the Clerk of Court is hereby instructed to issue a warrant so that the defendant may be arrested and brought before this Court.

By the Court: Matthew L. Joyce, United States District Judge.

Dated: Sept. 11th, 1954.

[File endorsement omitted.]

[fol. 12] UNITED STATES DISTRICT COURT, FOURTH DIVISION, DISTRICT OF MINNESOTA

BENCH WARRANT AND RETURN—September 1, 1954

The President of the United States of America

To any United States Marshal or any other authorized Officer:—Greeting:

You are hereby commanded that you apprehend Thomas E. Pollard and him immediately have before the United States District Court for the District of Minnesota at Minneapolis, Minn., to show cause why the probation accorded him on October 3rd, 1952 should not be revoked. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable Matthew M. Joyce, United States District Judge at Minneapolis, Minnesota this 1st day of September, A. D. 1954.

Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy Clerk.

[fol. 13] UNITED STATES MARSHAL'S RETURN

District of Minnesota, ss:

Received the within writ the 1st day of September, 1954, and executed same with the arrest of Thomas E. Pollard on Sept. 15, 1954 at 2:30 PM.

C. Enard Erickson, United States Marshal, By Robert L. Allie, Deputy Marshal.

Filed Sept. 15, 1954.

Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy.

[fol. 14] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

CLERK'S TEMPORARY COMMITMENT AND RETURN

Temporary commitment of Thomas E. Pollard to the United States Marshal for the District of Minnesota:

By order of court entered on September 1st, 1954, at Minneapolis, Minnesota you are commanded to take the custody of the above-named defendant and to commit him, with a certified copy of this commitment, to the Custodian of a place of confinement within this district approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law.

Chell M. Smith, Clerk. By Gladys A. M. Rippe, Deputy Clerk.

Dated September 15th, 1954.

RETURN

Received this commitment and designated prisoner on Sept. 15, 1954, and on Sept. 15, 1954, committed him to Hennepin County Jail and left with the custodian at the same time a certified copy of this commitment.

C. Enard Erickson, United States Marshal. (By) Robert L. Allie, Deputy.

Dated: Sept. 15, 1954.

Filed Dec. 6, 1954, Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy.

[fol. 15] UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

TRANSCRIPT OF PROCEEDINGS—September 21, 1954

The above entitled matter came on for hearing before the Honorable Matthew M. Joyce, a Judge of the above-entitled court on September 21, 1954.

APPEARANCES:

Harold Evarts, Assistant U. S. Attorney, appearing on behalf of the Government.

Mr. Evarts: If it please the Court, the first matter is United States vs. Thomas E. Pollard. The defendant, Your Honor, is before the Court at this time and is not represented by counsel, is that correct?

The Defendant: That's correct.

[fol. 16] Mr. Evarts: You understand you have the right to be represented by counsel?

The Defendant: Yes, sir, I do.

Mr. Evarts: Is it your desire to waive that right?

The Defendant: Yes, sir. It is.

The Court: What I am going to do in your case, because of the record, is to sentence you in the first instance: It's the judgment of the Court that you be confined in an institution to be selected by the Attorney General of the United States for a period of two years. That's all.

Mr. Evarts: Now, Your Honor, as you recall, the record shows that he was, sentence was imposed on October 3, 1952, and I would suggest to the Court that an Order be made setting aside the judgment and commitment that was entered at that time so that the record will now truly reflect the status of the events.

The Court: All right.

I hereby certify that the above and foregoing transcript is a true and correct copy of my original stenographic notes taken at the above time and place.

Earl G. Anderson, Official Court Reporter.

[fols. 17-18] UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA—FOURTH DIVISION

[Title omitted]

JUDGMENT AND COMMITMENT—September 21, 1954

On this 21st day of September, 1954 came the attorney for the government and the defendant appeared in person and without counsel; the Court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the Court, and the defendant thereupon stated that he waived the right to the assistance of counsel.

It is adjudged that the defendant has been convicted upon his plea of guilty of the offense of embezzlement of United States check in violation of 18 USC. 1702, as charged in an Information (Ind. Waived) and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) years

It is adjudged that the Judgment and Order of Probation made and entered on October 3rd, 1952, is hereby set aside.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Approved:

Matthew M. Joyce, United States District Judge.
Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy Clerk.

Harold C. Evarts, Ass't. U. S. Atty.

Filed September 21, 1954.

Chell M. Smith, Clerk, By Gladys A. M. Rippe, Deputy.

[fol. 19] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA, MINNEAPOLIS DIVISION

Minneapolis, Minnesota

[Title omitted]

PETITION FOR MOTION TO VACATE SENTENCE JUDGMENT: SECTION 2255, TITLE 28, U.S.C.A.—Filed February 11, 1955

Comes now, Petitioner, who states he is a layman, unlearned at law, and does not have funds to pay for this action. Petitioner begs the Court's indulgence in the matter of form.

FACTS

(1) Petitioner states that, on or about September 15, 1952, while incarcerated in the Minnesota State Prison, Stillwater, Minn., he was brought before Judge Matthew M. Joyce in the U. S. District Court in Minneapolis, Minn., and arraigned on a charged of "embezzlement." Petitioner also states that he entered a plea of "guilty" at that time and was remanded to a future date for sentencing.

(2) Petitioner states that on October 3, 1952, he was again brought before Judge Joyce. Petitioner states that, as the transcript and record of this proceeding will indicate, at no time or in any instance in the petitioner's presence did Judge Joyce cite, refer or allude to or specify a sentence of any nature or description. Petitioner further states that he, as well as his wife, a close and interested personal friend and two officials of the Minn. State Prison who were all present in the court-room, was under the impression that petitioner's case was dismissed in that no sentence was handed down and petitioner was not remanded for a further hearing.

[fol. 20] (3) Petitioner states that he was paroled from the Minn. State Prison on the day before Thanksgiving, 1952 and at this time was informed by prison officials that he was to report to the Federal Probation Office in Minneapolis, Minn. When petitioner inquired of the prison officials as to why it was necessary for him to report to said office he was informed that they did not know but that they would investigate. After the prison officials had conversed by telephone with the federal probation office in Minneapolis, pe-

titioner was notified that, although petitioner *was not present at time of sentencing;* and *entirely* (until this time) *unknown to him,* he had been "sentenced" to three (3) years probation and said "embezzlement" charge.

(4) Petitioner further states that, upon his initial report to federal probation officer Mr. Reynold Lee, petitioner inquired as to how he could possibly be on Federal probation when *he had never been sentenced in any way, at anytime to any sentence.* At this time, although Mr. Lee had no evidence to dispute petitioner's allegation, he yet undertook to and succeeded in convincing petitioner that the "sentence" of three (3) years probation was legal. Petitioner, being unversed in law and desiring to be cooperative in every respect, felt at that time that he was forced to accept Mr. Lee's explanation.

(5) Petitioner Further states that, approximately one (1) year later, he again brought up the question of his never having stood before a Federal Judge and received said three (3) year probationary "sentence". At this time Mr. Lee advised petitioner that he would investigate the matter and that he would have some definite word on it at petitioner's next report date in two (2) weeks. Upon petitioner's next report, Mr. Lee informed him that to his (Mr. Lee's) "surprise", he had found, upon investigation, that petitioner's allegations regarding this matter were "entirely true", and further stated that, in all his years of federal service, he had "never witnessed a situation like this before". Further conversation with Mr. Lee at this time led petitioner to believe that it would not be wise to pursue said matter further—petitioner had no knowledge as to what further complications he might or could become involved in. [fol. 21] (6) On September 21, 1954, because of petitioner's excessive drinking, his "probation" was violated and he was again brought before Judge Joyce. At this time, September 21, 1954, Judge Joyce stated in open court that petitioner's original three (3) year probationary "sentence" was therein "set aside", and sentenced petitioner to two (2) years incarceration in a Federal penal institution.

CONTENTIONS

1. Petitioner was at no time sentenced to said three (3) years probationary sentence.

2. Since petitioner was never sentenced to said three (3) years probation, petitioner's present sentence of two (2) years incarceration for "probation" violation is illegal and unconstitutional.

3. Petitioner should be immediately released from his present state of incarceration.

4. It is illegal and unconstitutional to sentence an American citizen "in absentia" and without said citizen being offered an opportunity to speak in his own behalf prior to sentencing.

PLEA

Petitioner prays that, although this may not be the correct form, it be taken into consideration that he is a layman and unlearned at law, and that this be filed as a Motion to Vacate Sentence and Judgment under Section 2255, Title 28, U.S.C.A., in Forma Pauperis, and that relief be herein ordered.

Thomas E. Pollard, Petitioner.

COUNTY OF LEAVENWORTH,
State of Kansas, ss:

Subscribed and sworn to before me this 9th day of February, 1955.

(Seal)

Edward O. Doughty, Notary Public.

My commission expires May 21, 1957.

[fol. 22] COUNTY OF LEAVENWORTH,
State of Kansas, ss

AFFIDAVIT IN FORMA PAUPERIS

Thomas E. Pollard, layman and unlearned at law, being duly sworn according to law, deposes and says: That he is petitioner in entitled action; that he is a citizen of the

United States by virtue of birth; that he is a poor and indigent person at this time and because of his poverty he is unable to pay the cost of said action or to give security thereof; petitioner believes he is entitled to the redress he seeks in such action, and said action is taken in good faith.

For such petitioner will ever pray.

Thomas E. Pollard, Petitioner.

Subscribed and sworn to before me this day of February 9, 1955.

(Seal)

Edward O. Doughty, Notary Public.

My commission expires May 21, 1957.

[File endorsement omitted.]

[fol. 23] UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

ORDER DENYING MOTIONS TO VACATE JUDGMENT AND FOR LEAVE TO PROCEED IN FORMA PAUPERIS—March 23, 1955

This matter comes before the court upon the motion of defendant Thomas E. Pollard to vacate the judgment and sentence previously entered herein on September 21, 1954, said motion being made under Title 28 U.S.C. Section 2255, and upon motion to proceed in such matter in forma pauperis.

The court having examined and considered the motion and affidavit addressed in support thereof, and upon all the files and records herein, including the notes of the official Reporter made at the time the said sentence was imposed, finds that:

Defendant was initially sentenced upon September 21, 1954, and the files and records in the case conclusively show that said judgment was within the jurisdiction of

the court and the sentence imposed was valid and in accordance with law.

Accordingly, it is ordered that the motions of defendant and all of them be and the same are hereby denied.

Matthew M. Joyce, United States District Judge.

Dated March 23, 1955.

[File endorsement omitted.]

[fol. 24] IN THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

NOTICE OF APPEAL AND MOTION AND AFFIDAVIT IN FORMA PAUPERIS—Filed April 4, 1955

Please take notice that the above named petitioner hereby Appeals to the Eighth Circuit Court of Appeals from the order of this Court Denying the relief prayed for herein.

I, the above named petitioner, having been substantially deprived of Due Process of Law, hereby Appeals to the Eighth Circuit Court of Appeals from the above stated judgement and from every part of said order as well as the whole thereof.

Respectfully submitted,

Thomas E. Pollard, Petitioner.

Dated: —— ——.

To: U. S. District Attorney, Minneapolis, Minn.

Appeal: —— ——, District Judge:

[fol. 25] IN THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

AFFIDAVIT AND MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS

Comes now the above petitioner and shows to the Court that he is a citizen of the United States; that he desires to Appeal to the Eighth Circuit Court of Appeals from

the order of this Court Denying the Relief prayed for herein; that he believes he has a meritorious cause of Action and is entitled to the redress he seeks by such Appeal; that his appeal is taken in good faith; that he is without funds and has no property with which to pay or secure the payment of costs of filing Notice of Appeal and preparation of record on Appeal.

Wherefore, Petitioner moves the Court for an order permitting him to file such Notice of Appeal and to proceed on Appeal without the prepayment of fees or costs.

Thomas E. Pollard, Petitioner.

County of Leavenworth,
State of Kansas, ss

Subscribed and sworn to before me this 31st day of March, 1955.

(Seal)

Edward O. Doughty, Notary Public.

My commission expires May 12, 1957.

[File endorsement omitted.]

[fol. 26] United States District Court, District of Minnesota, Fourth Division

[Title omitted]

Order Denying Motion for Leave to Proceed in Forma Pauperis—April 18, 1955

The motion of the above entitled defendant filed with the Clerk of this Court on the 4th day of April, 1955, be and the same is hereby in all respects denied.

Dated April 18, 1955.

Matthew M. Joyce, United States District Judge.

[File endorsement omitted.]

[fol. 27] IN UNITED STATES COURT OF APPEALS, EIGHTH CIRCUIT

To: The Honorable Archibald K. Gardner, Chief Judge, Eighth Circuit Court of Appeals, Eighth Judicial District, St. Louis, 1, Missouri:

MOTION FOR APPEAL IN FORMA PAUPERIS—Sworn to May 16, 1955

It is my fervent and heartfelt hope that this motion will be accepted as an Appeal in Forma Pauperis and that it's honest and forthright content will, as the writer sincerely feels it does, merit the consideration, action and judgment of the court. Please know that I am a layman, that I am unlearned at law and that I do not have the funds to pay for this action. I respectfully request the Court's indulgence in the matter of form.

On February 9, 1955, I submitted to the United States District Court, District of Minnesota, Fourth Division, a Petition for Motion to Vacate Sentence and Judgment, Section 2255, Title 28, U.S.C.A., in Forma Pauperis, in Case #8283. On March 23, 1955, an order denying this Motion was handed down by the Honorable Matthew M. Joyce.

On March 31, 1955, I submitted to the same court an affidavit and motion for leave to proceed on appeal in forma pauperis. On April 18, 1955 an order denying this was handed down by the Honorable Matthew M. Joyce.

In stating the following facts regarding my case I will try to be as brief and concise as possible. Please let me again request that it be taken into consideration that I am a layman and unlearned at law.

On October 3, 1952, while incarcerated in the Minnesota State Prison, Stillwater, Minn., I was brought before the Honorable Matthew M. Joyce in the United States District Court, Minneapolis, Minn., on a charge of "Embezzlement." to which I pled "guilty." As the transcript and record of the proceedings will indicate, at no time or in any instance in my presence did Judge Joyce cite, refer, allude to or specify a sentence of any nature or description. I, as well as my wife, a close and interested friend and two officials of the Minn. State Prison who were all

present in the courtroom, was under the impression that my case was dismissed in that no sentence was handed down and I was not remanded for a further hearing before being dismissed from the courtroom by Judge Joyce.

I was paroled from the Minn. State Prison on the day before Thanksgiving, 1952, and was informed at the time that I was to report to the Federal Probation Office in Minneapolis, Minn. When I inquired of the prison officials as to why it was necessary for me to report to that office I was informed that they did not know but that they would investigate for me.

[fol. 28] After the prison officials had conversed by telephone with the Federal Probation office in Minneapolis, I was informed that, although I was not present at time of sentencing and entirely unknown to me, I had somehow received a three (3) year probationary sentence as a result of my court appearance on October 3, 1952. Also, at this same time, Deputy Warden Ico Fiske, told me that they definitely knew nothing of any such sentence—that the two prison officials that had escorted me to the court hearing and was present at my hearing on October 3 had reported back to the prison that my case had been dismissed. He also said that he doubted if the Minn. State Board of Parole was aware of any such sentence at the time of my parole Board hearing in November, 1952, because it was not brought up or discussed at the hearing.

On my initial report to federal probation officer Mr. Reynold Lee, Federal Probation Officer, Minneapolis, Minn. I inquired as to how I could possibly be on Federal Probation when I had never been sentenced in any way that I was aware of, at any time, to any sentence. At this time, although Mr. Lee had no evidence to dispute my allegation, he yet undertook to an- succeeded in convincing me that the three (3) year probationary sentence was legal. In that I wished to cooperate with the Federal Officials in every respect, and because I am unversed in law and did not wish to take the time out from providing for my wife and children and re-establishing myself to pursue the matter further, I felt that I was forced to accept Mr. Lee's explanation, unenlightening though it was.

I will be frank and admit that as time went on this situation became as it yet remains—a veritable mental hazard

to me. I simply could not understand how I could be forced to serve a sentence to which I was never sentenced.

Approximately one (1) year later I again brought up the question to Mr. Lee that I had never stood before a Federal Judge and received that three (3) year probationary sentence. At this time, on my repeated plea to him, Mr. Lee said that he would investigate the matter and that he would have some definite word on it at my next report date in two (2) weeks. At my next report Mr. Lee informed me that, to his surprise, he had found that my allegations regarding this matter were entirely true and further stated that in his years of federal service he had never witnessed a situation quite like that before. Mr. Lee told me outright that Judge Joyce had forgotten to sentence me in the courtroom. He went on to show me a transcript of my hearing and pointed out that, added to the bottom of the transcript, the information was added that the sentence had been handed down in Judge Joyce's chambers hours after I had left the courtroom.

[fol. 29] Someone, I believe it was the Asst. U.S. Attorney, had at that time pointed out to him that he had neglected to sentence me. I wish to add at this point that I do not have a transcript of that hearing but, as God is my witness, these facts are the truth. Further conversation with Mr. Lee at this time led me to believe that it would not be wise for me to pursue the matter further. I had no knowledge as to what further complications I could or might become involved in.

On September 21, 1954, I was again brought before the Honorable Matthew M. Joyce in the U.S. District Court in Minneapolis, Minn., for violation of Probation. Judge Joyce stated that my three (3) year probationary sentence was set aside and sentenced me to two (2) years incarceration in a Federal Penal Institution.

That foregoing are the true and basic facts regarding my case and the following, briefly, are my contention. I believe that they are logical and justifiable.

1. I was at no time legally sentenced to the three (3) year probationary sentence.

2. Since I was never legally sentenced to the three (3) year probationary sentence, my present sentence of two

(2) years' incarceration for violation of probation is entirely illegal and unconstitutional.

3. I believe that it is illegal and unconstitutional to sentence an American citizen in absentia; as has been indicated from the records as shown to me in my case as having been done in my case.

4. I believe I should be immediately released from my present state of incarceration.

I wish to also add the following information for the court's consideration. In Judge Joyce's denial, dated March 23, 1955, of my original Motion to Vacate Sentence and Judgment, he completely ignores and avoids the basic and fundamental point of my Motion—That I was never legally sentenced to the three (3) year probationary sentence on October 3, 1952, and that consequently my present two (2) year sentence for violation of probation is illegal. Rather, Judge Joyce states, in part: "Defendant was *initially* sentenced upon *September 21, 1954.*" If I have interpreted that statement correctly, it would seem that Judge Joyce wishes to infer that my appearance in his court on that date was my first—that he chooses to ignore, or wishes to avoid reference to my appearance before him on October 3, 1952. At which time I was supposed to have [fol. 30] been sentenced to the probation. In neither of Judge Joyce's denials to me—of my Motion to Vacate Sentence, and Judgment and my Affidavit and Motion for leave to Appeal—does he give me any reason for his denial. He does not state that they are with or without merit—He simply states that they are denied. I cannot help but feel that Judge Joyce realized his error in my case and that he has attempted to discourage me in order to forestall any further action on my part. I honestly feel I have been unjustly and unfairly treated in this matter and I sincerely hope and pray that your acceptance of this letter as an appeal in Forma Pauperis, and your subsequent study of my case, will result in a complete and favorable clarification of it for me.

May I again please respectfully request that although this may not be a correct form, it be taken into consider-

ation that I am a layman and unlearned at law, and that this be filed as an Appeal in Forma Pauperis.

Thanking you sincerely, I am,
Very respectfully, Thomas E. Pollard, 71589, Appellant.

County of Leavenworth,
State of Kansas, ss:

Subscribed and sworn to before me on this day of — May, 1955. (S.E.A.L.) My commission expires May 21, 1957. Edward O. Doughty, Notary Public.

[fol. 31] County of Leavenworth,
State of Kansas, ss.

Affidavit in Forma Pauperis

Thomas E. Pollard, layman and unlearned at law, being duly sworn according to law, deposes and says; That he is appellant in entitled action; that he is a citizen of the United States by virtue of birth; that he is a poor and indigent person at this time and because of his poverty he is unable to pay the cost of said action or to give security thereof: Appellant believes he is entitled to the redress he seeks in such action, and said action is taken in good faith.

For such appellant will ever pray.

Thomas E. Pollard, Appellant.

Subscribed and sworn to before me on this 16th day of May, 1955. Edward O. Doughty, Notary Public. My commission expires May 21, 1957. (Seal.)

[fol. 32] UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, SEPTEMBER TERM, 1954

[Title omitted]

ORDER DENYING MOTION FOR APPEAL IN FORMA PAUPERIS—June 23, 1955

This matter is before the Court on "Motion for Appeal in Forma Pauperis" from an order of the United States District Court for the District of Minnesota denying Motion to vacate judgment and sentence of March 23, 1955. The United States District Judge denied leave to appeal in forma pauperis.

The Court has examined the original files of the United States District Court and after due consideration the motion for appeal in forma pauperis is denied.

The filing of the Motion will be without prepayment of costs in this Court.

June 23, 1955.

[File endorsement omitted.]

[fol. 33] IN THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, FOURTH DIVISION

[Title omitted]

MOTION AND AFFIDAVIT TO FILE AND TO PROCEED IN FORMA PAUPERIS—Filed July 11, 1955

Comes now, Thomas E. Pollard, Petitioner, and moves this Honorable Court to enter an Order directing the Clerk of the Court and the Court Reporter, to prepare and furnish Petitioner the Transcript and Records of Testimony in the above-numbered case as heard and recorded at Petitioner's hearings before this Honorable Court on the following dates:

1.) October 3, 1952
2.) September 21, 1954.

These Records are necessary so that Petitioner will have a true and complete record of the action taken in Petitioner's case on the above stated dates. Petitioner contemplates further action in his case and said Transcript and Records are necessary to properly prepare and prosecute same.

Petitioner respectfully shows that he is a poor and indigent person and that he cannot pay the costs and expense to obtain the above mentioned Transcript and Records or to give security thereof.

Respectfully submitted, Thomas E. Pollard, Petitioner.

County of Leavenworth,
State of Kansas, ss.

Subscribed and sworn to before me this 8th day of July, 1955. Edward O. Doughty, Notary Public. My commission expires May 21, 1957. (Seal.)

[fol. 34] County of Leavenworth,
State of Kansas, ss.

Affidavit in Forma Pauperis

Thomas E. Pollard, layman and unlearned at law, being duly sworn according to law, deposes and says; that he is Petitioner in entitled Action; that he is a citizen of the United States by virtue of birth; that he is a poor and indigent person at this time and because of his poverty he is unable to pay the cost of said Action or give security thereof; Petitioner believes he is entitled to the Action he seeks in entitled Action, and said action is taken in good faith.

For such Petitioner will ever pray.

Thomas E. Pollard, Petitioner.

Subscribed and sworn to before me this 8th day of July, 1955. Edward O. Doughty, Notary Public. My commission expires May 21, 1957. (Seal.)

[File endorsement omitted.]

[fol. 35] In United States District Court, District of Minnesota, Fourth Division

[Title omitted]

Order Re Furnishing Record—August 8, 1955

This matter is before the court on the motion of defendant Thomas E. Pollard for an order directing the Clerk of this Court and the Court Reporter to prepare and furnish, without cost to petitioner, the transcript of hearings in this case. The court having given consideration to said motion,

Orders, that the same be and it hereby is in all respects denied.

Matthew L. Joyce, United States District Judge.

Dated Aug. 8, 1955.

[File endorsement omitted.]

[fol. 36] In the United States District Court, District of Minnesota, Minneapolis, Minn.

[Title omitted]

Motion and Affidavit to File and to Proceed in Forma Pauperis—Filed December 12, 1955

Comes now, Thomas E. Pollard, Petitioner, and moves this Honorable Court to enter an order directing the clerk of the court to prepare and furnish petitioner transcripts of judgements and commitments of the above numbered case as entered by this Honorable Court following petitioners trials before this Honorable Court on October 3, 1952, and September 21, 1954.

Petitioner is in receipt of the memorandum, case No. 137 Misc., filed in the United States Supreme Court, October term, 1955, on November 15, 1955. Because of the substantial content of said memorandum, petitioner desires to prepare and initiate further action in his case, and said transcripts are necessary so that petitioner may properly do so.

Petitioner respectfully shows that he is a poor and indigent person and that he cannot pay the costs and expense to obtain the above mentioned transcripts or to give security thereof.

Petitioner respectfully states that he is taking this action in good faith.

Respectfully submitted, Thomas E. Pollard.

County of Leavenworth,
State of Kansas, ss.

Affidavit in Forma Pauperis

Thomas E. Pollard, layman and unlearned at law, being duly sworn according to law, deposes and says that he is petitioner in entitled action, that he is a citizen of the United States by virtue of birth, that he is a poor and indigent person at this time and because of his poverty he is unable to pay the cost of said action or to give security thereof. Petitioner beleives he is entitled to the order he seeks in entitled action, and said action is takken in good faith. For such Petitioner will ever pray.

Thomas E. Pollard.

Subscribed and sworn to before me this 8th day of December, 1955. L. E. Daggett, Parole Officer.

[File endorsement omitted.]

[fol. 37] United States District Court, District of Minnesota, Fourth Division

[Title omitted]

Order—December 29, 1955

The above-named defendant has filed a petition with the Clerk of this Court as of December 12, 1955, wherein he seeks an order directing the Clerk to prepare and furnish

him transcripts of judgments and commitments entered by this Court on October 3, 1952, and September 21, 1954.

It appears from the record that on March 23, 1955, Judge Joyce denied defendant's motion to vacate the judgment and sentence entered on September 21, 1954, said motion being made under Section 2255, Title 28, United States Code. On April 4, 1955, defendant filed a motion for leave to proceed on appeal in forma pauperis. This motion was likewise denied by Judge Joyce on April 18, 1955. On June 23, 1955, the United States Court of Appeals for the Eighth Circuit denied defendant's motion for leave to appeal in forma pauperis. On August 8, 1955, Judge Joyce filed an order denying a petition for transcripts of commitments in this matter. Consequently, it appears that substantially the same motion as that denied on August 8, 1955, is again being presented. In view of Judge Joyce's illness, the petition filed December 12, 1955, was referred to the undersigned.

It seems that all of these proceedings stem from the claim of the defendant that he is now illegally incarcerated in the United States Penitentiary at Leavenworth, Kansas. It appears that the defendant was charged by an information of embezzlement of a United States check, in violation of 18 United States Code, Section 1702. He entered a plea of guilty on September 8, 1952. He was before Judge Joyce for sentence on October 3, 1952, but he contends that on that date when the Court suspended the imposition of any sentence and placed him on probation for a period of three years he was not present in court and hence any probationary sentence was invalid. On October 3, 1952, he was incarcerated in Stillwater and the order of probation provided that the probationary period should commence upon his release from that institution. He was released from Stillwater on November 26, 1952, and it appears that he was under the supervision of the United States probation officer of this Court upon his release and remained on probation until September 21, 1954. On that date he was before Judge Joyce charged with violation of his probation, and after hearing, the Court revoked his probation and sentenced him to two years in a federal penitentiary.

The petitioner contends that his probationary sentence

was invalid because he was not present in court when any order of probation was made. He concludes, therefore, that when he was before the Court on September 21, 1954, and his probation was revoked and he was sentenced to two years, that that sentence was invalid. However, if it be assumed, as he contends, that his probationary sentence on [fol. 38] October 3, 1952, was invalid, it merely resulted in an absence of any valid sentence upon his plea of guilty which he entered on September 8, 1952. The Court did not thereby lose jurisdiction to impose a valid sentence, and hence when he was before the Court on September 21, 1954, and sentenced to a two-year term, that sentence and the judgment entered thereon were valid. Regardless, therefore, of his claim that his probationary sentence was invalid, there is no basis for his contention that the Court did not have jurisdiction to impose a valid sentence on September 21, 1954.

After due consideration of the entire record, the motion of the defendant filed herein on December 12, 1955, is in all things denied. It is so ordered.

Dated this 29th day of December, 1955.

By the Court: Emmett Moody, Chief Judge.

[File endorsement omitted.]

[fol. 39] IN UNITED STATES DISTRICT COURT

[Title omitted]

For U. S.:

Ronald E. Hachey, Ass't. U. S. Attorney.

For Defendant:

No Counsel.

1 Count

Vio. 18 USCA 1702—Embezzlement of U. S. check.

DOCKET ENTRIES

1952

Sept. 8—Filed Waiver of Indictment.

Sept. 8—Filed Information.

Sept. 8—Entered arraignment and plea of guilty; imposition of sentence deferred for pre-sentence investigation.

Sept. 10—Filed Writ of Habeas Corpus Ad Prosequendum with Marshal's return.

Oct. 1—Filed and Petition and Order for Writ of Habeas Corpus Ad Prosequendum (Bell, J.) and issued same in St. Paul, Minn.

Oct. 3—Filed Writ of Habeas Corpus Ad Prosequendum, with Marshal's return of service on Warden, Stillwater, Minn. 10-2-52.

Oct. 3—Filed and entered Judgment and Order of Probation: imposition of sentence suspended, 3 years probation to commence immediately after his release from Stillwater, Minnesota. (Joyce, J.). Made copies of Probation Order for Probation Officer.

Dec. 6—Filed Commissioner's Warrant of Arrest & Complaint. (Lundquist)

1954

Sept. 1—Filed and entered Order for Warrant of Arrest. (Joyce, J.)

Sept. 1—Issued Warrant of Arrest.

Sept. 15—Filed Bench Warrant & issued Clerk's temporary commitment.

1954

Sept. 21—Filed and entered Judgment and Commitment: 2 years—no rec. (Joyce, J.)

Sept. 21—Entered Order that the Judgment and Order of Probation made and entered on October 3rd, 1952, is hereby set aside. (Joyce, J.)

Sept. 21—Made copies of Jdgt. & Commitment for U. S. Marshal.

Oct. 14—Filed copy of Jdgt. & Commitment with marshal's return thereon.

Dec. 6—Filed clerk's temporary commitment with marshal's return thereon.

1955

Febr. 11—Filed Petition for Motion to vacate sentence judgment under Sec. 2255, Title 28, USCA to proceed in forma paupefis.

Mar. 23—Filed & entered Order denying motion to vacate judgment and sentence under Sec. 2255, Title 28, USCA and to proceed in forma pauperis.

Apr. 4—Filed affidavit and motion for leave to proceed on appeal in forma pauperis.

Apr. 18—Filed and entered order denying motion for leave to proceed in forma pauperis. (Joyce, J.)

[fols. 40-41] June 23—Filed and entered Order (copy) from U. S. Court of Appeals with reference to the motion denying motion to vacate judgment and sentence of March 23, 1955. The United States District judge denied leave to appeal in forma pauperis, and after due consideration the motion for appeal in forma pauperis is denied by U. S. Court of Appeals.

July 11—Filed motion and affidavit to file and to proceed in forma pauperis.

Aug. 8—Filed and entered Order denying the motion made by Deft. directing that the clerk and court reporter prepare and furnish without costs to the petitioner transcripts of hearings in this case (Joyce, J.)

Dec. 12—Filed motion and affidavit to file and proceed in forma pauperis.

Dec. 29—Filed and entered Order denying motion to file and proceed in forma pauperis. (Nordbye, J.)

1956

Mar. 13—Filed letter of request from Clerk of Supreme Court of the United States, Washington, D. C., for file to be mailed with Court's approval thereon. (Nordbye, J.)

[fol. 42] SUPREME COURT OF THE UNITED STATES

ORDER GRANTING CERTIORARI—February 27, 1956

On petition for writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby granted. The case is transferred to the appellate docket as No. 714 and placed on the summary calendar.

February 27, 1956.

(9080-3)